

**Updated Informative Digest for the State Board of Equalization's
Adoption of Proposed Amendments to California Code of Regulations,
Title 18, Section 1533.2, *Diesel Fuel Used in Farming Activities or Food
Processing***

The State Board of Equalization (Board) held a public hearing regarding the proposed amendments to California Code of Regulations, title 18, section (Regulation) 1533.2, *Diesel Fuel Used in Farming Activities*, on February, 24, 2015. During the public hearing, the Board unanimously voted to adopt the proposed amendments to Regulation 1533.2 without making any substantive changes. However, the Board did make minor nonsubstantial changes to the final text of the proposed amendments to Regulation 1533.2. The Board deleted an inadvertently inserted line from after the word "grocery" in the fourth sentence in subdivision (b)(1), Example B, consistently reformatted the right hand side margin in the partial exemption certificate in Appendix A, and increased the size of the font used in the first and last paragraphs in the partial exemption certificate in Appendix A.

The Board did not receive any written comments regarding the proposed regulatory action and no interested parties appeared at the public hearing on February 24, 2015, to comment on the proposed regulatory action. There have not been any changes to the applicable laws or the effect of, the objective of, and anticipated benefits from the adoption of the proposed amendments to Regulation 1533.2 described in the informative digest included in the notice of proposed regulatory action. The informative digest included in the notice of proposed regulatory action provides:

Summary of Existing Laws and Regulations

RTC section 6357.1 provides a partial exemption from sales and use tax on the sale and purchase of diesel fuel for use in farming activities or food processing, but does not define the term "diesel fuel." In 2002, the Board adopted Regulation 1533.2 to implement, interpret, and make specific the provisions of RTC section 6357.1. Regulation 1533.2 clarifies the conditions under which a sale or use of diesel fuel qualifies for the partial exemption provided by RTC section 6377.1. Also, as relevant here, Regulation 1533.2 provides a definition for the term diesel fuel solely for purposes of the partial exemption provided by RTC section 6357.1, which was based, in part, on the California Air Resources Board's (ARB's) definition of diesel fuel codified in California Code of Regulations, title 13, section (ARB Regulation) 2281, subdivision (b)(1), at the time the regulation was adopted. However, in 2004, the ARB amended its definition for the term diesel fuel, and the definition for diesel fuel in Regulation 1533.2 is no longer consistent with the ARB's definition for diesel fuel in ARB Regulation 2281. In addition, the Diesel Fuel Tax Law (RTC § 60001 et seq.) also provides a definition for the term diesel fuel in RTC section 60022, which is applicable to diesel fuel transactions.

The exemption provided by RTC section 6357.1 is referred to as a partial exemption because section 6357.1, subdivision (c), provides that the exemption for diesel fuel used in farming activities and food processing does not apply to specified sales and use taxes included in the statewide sales and use tax rate. Also, Regulation 1533.2, subdivision (c), prescribes the content of the partial exemption certificate that purchasers are required to provide to retailers to claim the partial exemption provided by RTC section 6357.1. Subdivision (c) provides that any document satisfying the requirements may be used as an exemption certificate, and Appendix A to Regulation 1533.1 provides a partial exemption certificate form. And, as relevant here, the note section in Appendix A provides that the exemption provided by RTC section 6357.1 “is an exemption only from the state general fund portion of the sales and use tax rate” because that was the case when the Board adopted Regulation 1533.2. However, the partial exemption provided by RTC section 6357.1 now applies to state sales and use taxes that are not required to be deposited in the general fund, such as the sales and use tax imposed by section 36 of article XIII of the California Constitution that goes to the state’s Education Protection Account (as already provided in Regulation 1533.2, subdivision (a)).

Effect, Objective, and Benefits of the Proposed Amendments to Regulation 1533.2

Due to the 2004 amendments to ARB Regulation 2281, subdivision (b), the definition of diesel fuel in Regulation 1533.2, which refers to the American Society for Testing and Materials Standard Specification for Diesel Fuel Oils (“ASTM”) D 975-81, is no longer consistent with the provisions of ARB Regulation 2281, subdivision (b)(1), which no longer refer to the “ASTM Standard Specification for Diesel Fuel Oils D975-81.” Therefore, Board staff considered whether it was necessary to amend the definition of diesel fuel in Regulation 1533.2 due to the 2004 amendments to the definition of diesel fuel in ARB Regulation 2281. And, staff found that, for purposes of the administering the partial exemption provided by RTC section 6357.1, it would be more effective to amend the definition of diesel fuel in Regulation 1533.2 so that the definition will no longer be based upon the ARB definition, but instead will be based upon the definition of the term diesel fuel contained in section 60022 of the Diesel Fuel Tax Law. This is because staff determined that revising the definition of diesel fuel so that it is consistent in the sales and use tax regulations and the Diesel Fuel Tax Law will provide more clarity to taxpayers and staff.

Interested Parties Process

The Board's Business Taxes Committee (BTC) staff prepared draft amendments to subdivision (b)(6) of Regulation 1533.2 to revise the definition of diesel fuel to be consistent with the definition of diesel fuel in RTC section 60022. BTC staff subsequently prepared a discussion paper, and provided the discussion paper and its draft amendments to Regulation 1533.2 to the interested parties. On July 15, 2014, BTC staff conducted an interested parties meeting to discuss the draft amendments.

Since BTC staff did not receive any inquiries or written comments regarding its draft amendments during or subsequent to the July 15, 2014, interested parties meeting and staff had no changes to its recommendation to amend Regulation 1533.2, BTC staff did not prepare a second discussion paper and cancelled the second interested parties meeting that was previously scheduled to discuss staff's draft amendments. Staff also notified interested parties that comments could be submitted up to September 25, 2014, for consideration in the preparation of the Formal Issue Paper regarding the draft amendments. However, staff did not receive any other comments.

November 19, 2014 BTC Meeting

Subsequently, staff prepared Formal Issue Paper 14-009 and distributed it to the Board Members for consideration at the Board's November 19, 2014, BTC meeting. Formal Issue Paper 14-009 recommended that the Board approve and authorize publication of the amendments to Regulation 1533.2 (discussed above) in order to revise the definition of the term diesel fuel in Regulation 1533.2, subdivision (b)(6), so that the term has the same meaning as defined in section 60022 of the Diesel Fuel Tax Law. Formal Issue Paper 14-009 recommended that the Board add language to Regulation 1533.2, subdivision (b)(1), Example B, to provide a complete, grammatically correct sentence and to clarify which specific trips qualify for the partial exemption, and to remove the reference to the "general fund" in the note section of Appendix A to Regulation 1533.2. Formal Issue Paper 14-009 also recommended that the Board replace the capital "S" with a lower case "s" at the beginnings of the words "Section" throughout Appendix A to Regulation 1533.2 to make the words consistent with the references to "section" and "sections" in the body of the regulation and consistent with the citation format prescribed in the California Style Manual.

During the November 19, 2014, meeting, the Board Members unanimously voted to propose the amendments to Regulation 1533.2 recommended in the formal issue paper. The Board determined that the proposed amendments to Regulation 1533.2 are necessary to have the effect and accomplish the objective of making the definition for the term diesel fuel in Regulations 1533.2 consistent with the definition of the term

diesel fuel in the Diesel Fuel Tax Law that applies to diesel fuel transactions.

The Board also anticipates that the proposed amendments to Regulation 1533.2 will reduce confusion, promote fairness, and benefit retailers, consumers, Board staff, and the Board by making the definition for the term diesel fuel in Regulation 1533.2 consistent with the definition for the term diesel fuel in the Diesel Fuel Tax Law that applies to diesel fuel transactions and clarifying that biodiesel is diesel fuel for purposes of the partial exemption from sales and use tax for diesel fuel used in farming activities or food processing.

The Board has performed an evaluation of whether the proposed amendments to Regulation 1533.2 are inconsistent or incompatible with existing state regulations and determined that the proposed amendments are not inconsistent or incompatible with existing state regulations because Regulation 1533.2 is the only state regulation providing a partial sales tax exemption for diesel fuel used in farming activities or food processing. The Board is aware that California Code of Regulations, title 18, section (Regulation) 1598.1, *Diesel Fuel Prepayment Exemption*, also defines the term “diesel fuel” and the Board is separately proposing to amend the definition for the term diesel fuel in Regulation 1598.1 so that it consistent with the current definition of the term diesel fuel in RTC section 60022 and the proposed amendments to the definition of the term diesel fuel in Regulation 1533.2. In addition, the Board has determined that there are no comparable federal regulations or statutes to Regulation 1533.2 or the proposed amendments to Regulation 1533.2.